

10 May 2024

By email: [REDACTED]

Dear [REDACTED]

Official Information Act 1982 Request (OIA) – investigations and enforcement

I refer to your original OIA request on 29 February 2024. Following our request asking you to clarify and to narrow the scope of your OIA, on 11 March you replied and we understand that your request is for the following:

For each year since the establishment of the FMA in 2011 the numbers of:

- *Referrals from external sources.*
- *Cases that were deemed serious enough to be referred to the investigations team.*
- *Investigations launched.*
- *Criminal proceedings initiated¹, with a breakdown as to outcomes of the criminal proceedings (as per our previous OIA58).*

In relation to the above requests, the numbers of cases concerning market manipulation and insider trading.

Our response

We have considered your request under the OIA.

Referrals from external sources

We have interpreted your request as all information about misconduct matters or complaints the FMA received from external sources and the number of cases we opened as a result. Please note that:

- We have only included information from 2014, when our current internal system was implemented. We are unable to retrieve information prior to that date from the system, and to obtain the

¹ We note that you have also referenced enforcement actions in your OIA but have confined those to criminal proceedings in clarifying email on 11 March. For the purposes of responding to your OIA we have interpreted 'enforcement actions' accordingly. Consequently, we have not included any numbers relating to civil proceedings. Nor have we referred to any of the administrative tools available to the FMA. These include by way of example, civil proceedings seeking a pecuniary penalty, warnings, stop orders, censure, directions etc.

information from our records would require significant time and resources to search for the data. Accordingly, we have decided to refuse this aspect of your request from 2011 to 2013 pursuant to the following sections of the OIA: section 18(e) (despite reasonable efforts to locate it, the information cannot be found) and section 18(f) (the information cannot be made available without significant collation and research). We have considered whether charging or extending the timeframe for responding to your request would help as required by section 18A of the OIA. We do not believe that charging would help, and we have already extended the request to provide this response.

- The information is based on the numbers recorded in our system and how our case managers have categorised the cases in our system.
- In relation to insider trading and market manipulation, our system also has a category of ‘Insider trading/ or Market manipulation’ rather than just insider trading or market manipulation. It might be that the case could involve both matters.
- The ‘total misconduct cases or complaints from external sources’ includes number of cases in ‘market manipulation’, ‘insider trading’ and ‘Insider trading/ or Market manipulation’. We have tallied the numbers relying on cases by calendar year.
- The 2024 numbers are up until 1 April 2024.

Table 1: referrals from external sources

	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Total misconduct cases or complaints from external sources	677	1175	895	1023	714	923	848	969	844	1149	319
Insider Trading	0	0	0	0	0	0	1	1	3	41	4
Market Manipulation	0	0	0	0	0	0	0	0	4	8	2
Insider Trading /or Market Manipulation	9	28	21	25	17	27	38	45	43	0	0

Investigations referred

We have considered your request and any means available to us to compile this information (or similar information) for you. Please note:

- The FMA does not keep records of cases that were deemed serious enough to be referred to the investigations team or were referred to the investigations team. The Investigations Team often considers cases and various requests from other teams before the cases are formally investigated or managed by their team. This can be by way of oral discussion or a meeting.
- After discussing internally with the FMA’s investigations team and IT team, the only method for us to accurately compile this information would be to manually review individual complaint cases for each year and check emails saved within to determine if matters were referred to the investigation team for consideration.
- Accordingly, we have decided to refuse this request under section 18(f) of the OIA (the information cannot be made available without significant collation and research). We have considered whether charging or extending the timeframe for responding to your request would help as required by section 18A of the OIA. Given the number of cases, emails and length of time we do not believe that charging or extending would be sufficient for us to compile this information for you.

Investigations launched

The FMA does not keep a registry of the number of investigations launched. Table 2:

- Was compiled with reference to several internal operational systems to check the number of investigations launched or the number that the Investigations Team was working on.
- Records the year in which the investigation case was initiated formally in our system (it might have been referred to us before then).

Table 2: investigations launched

Year (20~)	11	12	13	14	15	16	17	18	19	20	21	22	23	24
Total no. Investigations	5	16	22	17	18	28	12	9	15	16	12	12	12	5
Market Manipulation	0	1	0	1	0	0	1	0	1	2	2	1	1	0
Insider Trading	0	1	1	6	1	5	1	0	1	1	2	2	3	0

Criminal proceedings initiated

Table 3 details the number of criminal proceedings initiated by the FMA. Please note:

- The FMA does not keep specific records of the number of cases initiated, by year nor by outcome. In order to respond to your request, we have gone through our media releases and other data sources to calculate the numbers.
- From our search, there are no criminal prosecutions initiated regarding market manipulation to date. Note however, that the FMA has issued other civil proceedings (and taken other enforcement action) in respect of market manipulation and insider trading.
- If you would like further information about criminal prosecution brought by the FMA the information is also available publicly on our website at: [Enforcement Activity | Financial Markets Authority \(fma.govt.nz\)](https://www.fma.govt.nz/enforcement-activity).

Table 3: criminal proceedings initiated

	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Number of criminal proceedings initiated	5	3	1	1	5	2	1	2	1	0	2	0
Number of criminal proceedings initiated regarding insider trading	0	0	0	0	2	0	0	0	1	0	0	0

Outcomes of criminal proceedings

In order to compile this information our team had to review published judgments and classified the enforcement actions outcomes of each proceeding. Please note the following key points about the data:

- Many proceedings (both criminal and civil) will have multiple defendants. The pathways each defendant may take (in one criminal prosecution initiated) may vary. Some will plead guilty at the first opportunity, others will go to trial and may be found guilty or not. Occasionally proceedings are

stayed against a defendant, or charges are withdrawn. Thus, recording by outcome will mean that the number of criminal cases initiated does not align with the numbers of outcomes for defendants.

- In imposing sentences, a defendant may have more than one type of sentence imposed in combination with another type of sentence. For example, home detention and a banning order may be imposed together. In the table below we have only recorded the numbers according to the most severe sentence imposed. This means, that in relation to the example of both home detention and a banning order being imposed on the same defendant in one prosecution, the outcome is only recorded in the home detention row, not in both the home detention and the 'different sentence' row.
- The other reason that the number of prosecutions may not appear to align with the numbers of outcomes is that some of the cases included in the table were initiated before the FMA was established in 2011 but were continued by the FMA (following the disestablishment of the Securities Commission).
- It was also not possible to categorise all cases as per their outcome pursuant to a previous OIA (OIA58) as that OIA also considered civil cases, which can also have a very wide variety of outcomes / or relief granted.

Table 4: breakdown of the criminal defendants as per their outcomes

Outcomes of criminal prosecutions by the FMA	Year (20~)													
	11	12	13	14	15	16	17	18	19	20	21	22	23	24
Number of defendants sentenced to imprisonment	3	5	4	1	1	0	0	0	4	0	0	0	0	0
Number of defendants sentenced to home detention	3	2	8	0	0	1	2	0	1	1	0	0	1	1
Number of prosecutions resulting in a different sentence (not imprisonment nor home detention)	3	8	0	7	6	1	1	1	3	1	1	0	1	0

In relation to the insider trading cases (noted above in Table 3 - 2 in 2017 and 1 in 2021), summaries of outcomes were:

- Case in 2017: one of the defendants was sentenced to 6 months home detention and the other was found not guilty.
- Case in 2017: Defendant entered a guilty plea, was ordered to pay a fine of \$12,000 and entered into an enforceable undertaking with the FMA.

- Case in 2021: Defendant found guilty following trial, and was sentenced to 6 months' community detention and ordered to pay a \$100,000 fine. The defendant has appealed, and the matter is still before the Courts. The matter is subject to suppression orders.

Conclusion

You have the right to complain to the Ombudsman regarding our assessment of your OIA request, in accordance with section 28 of the Official Information Act. Information about how to make a complaint is available at www.ombudsman.parliament.nz or phone 0800 802 602.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Nath Lostitmonton', written in a cursive style.

Nath Lostitmonton
Senior Legal Counsel